

**BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND**

**LONGMEAD CROSSING COMMUNITY
SERVICES ASSOCIATION**

Complainant

v.

ADRIENNE VENSON

Respondent

Case No. 04-06

DECISION AND ORDER

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland (the “Commission”) for hearing on May 25, 2006, pursuant to §§10B-5(i), 10B-9(a), 10B-10, 10B-12 and 10B-13 of the Montgomery County Code, 1994, as amended (“Code”), and the duly appointed Hearing Panel, having considered the testimony and evidence of record, finds, concludes and orders as follows:

Background

On January 12, 2006, Complainant Longmead Crossing Community Services Association (“Complainant”) filed a complaint with the Montgomery County Office of Common Ownership Communities (the “COC Office”) alleging that Adrienne Venson (“Respondent”) was in violation of Complainant’s architectural control guidelines in that the paint on her front railing was rusted and flaking and needed to be scraped and repainted, and in that screens were missing from the front windows. Respondent did not file any answer.

The Commission accepted jurisdiction over the dispute and scheduled the dispute for a hearing.

A hearing on the dispute was held on May 25, 2006, beginning at 6:30 p.m. Complainant was represented by counsel and by Complainant's management agent, Tom VanPelt. Mr. VanPelt was sworn and testified on behalf of Complainant. Respondent did not appear either in person or by counsel.

The following exhibits were admitted in evidence without objection:

Commission Exhibit 1: Case file of the COC Office.

Commission Exhibit 2: Additional legal documents of Complainant, including Articles of Incorporation, Declaration of Covenants, and Bylaws.

Complainant Exhibit 1: Deed dated December 8, 1993 conveying property at 2201 Bear Valley Terrace, Silver Spring, Maryland, to Respondent.

Complainant Exhibit 2: Nine photographs identified by Mr. VanPelt as recent photographs of the front of Respondent's property on Bear Valley Terrace

Complainant Exhibit 3: Statement for legal services to that time in the amount of \$1,273, identified by Mr. VanPelt as fees incurred by Complainant in connection with this proceeding

At the conclusion of the hearing, Complainant requested that the record remain open for five days to submit final statements for attorneys' fees and for charges by Complainant's management agent in connection with this proceeding. The Panel agreed to leave the record open as requested. Complainant has since submitted a final fee statement of \$1,352.60 and a statement from its management agent's for charges in the amount of \$303.28.

Findings of Fact

Based on the undisputed testimony of Mr. VanPelt, the exhibits admitted in evidence without objection, and Complainant's post-hearing submission, the Panel finds the following facts:

1. Respondent is the owner of property at 2201 Bear Valley Terrace, Silver Spring, Maryland, which is subject to Complainant's governing documents.

2. Respondent's property appears to be occupied, in that newspapers are being picked up and grass is being cut.

3. Complainant's governing documents include Architectural Control Guidelines ("Guidelines") which, among other things, address railings and windows.

4. Respondent has failed to maintain her property in compliance with the Guidelines in that her front railing is rusted and flaking, and screens are missing on her front windows.

5. Complainant has sent Respondent numerous notices regarding the condition of her front railing and windows during the period March - November 2005, but Respondent did not remedy the maintenance issues, nor did she object to Complainant's notices or otherwise respond to Complainant.

6. Complainant also attempted to contact Respondent personally concerning the maintenance issues by having a representative knock at her door, but was unable to make contact with her.

7. After the complaint was filed in this matter, the COC Office notified Respondent in writing on January 12, 2006 and February 22, 2006 that the complaint had been filed, that an answer was required, and that mediation was available. Respondent did not respond to the COC Office's letters.

8. On March 17, 2006, the COC Office again wrote to Respondent informing her that on April 5, 2006, the Commission would consider whether to accept jurisdiction of the complaint and inviting her to submit her comments in writing by March 31, 2006. No comments were received.

9. The Commission voted to accept jurisdiction at its April 5, 2006 meeting.

10. As shown by affidavit of COC Office staff included in Commission Exhibit 1, on April 6, 2006, the COC Office sent a Summons and Notice of Hearing to Respondent by both regular and certified mail, informing her of a hearing on May 25, 2006 at 6:30 p.m. As of the date of the hearing, the Summons and Notice as sent by regular mail had not been returned to the COC Office.

11. The COC Office also wrote to Respondent on April 25, May 12 and May 15, 2006, to remind her of the hearing, to notify her of the identity of Panel members, and to notify her of the specific room in which the hearing would be held.

12. Respondent did not attend the hearing, either in person or by counsel.

13. Complainant has incurred a fee of \$50 to file its complaint against Respondent.

14. Complainant has incurred legal fees of \$1,352.60 in connection with this proceeding.

15. Complainant has incurred management agent's charges of \$303.28 in connection with this proceeding, which are over and above the management agent's regular charges to complainant.

Conclusions of Law and Discussion

The Panel concludes that Respondent is in violation of Complainant's Guidelines, that she has received multiple notices of those violations, and that she has failed to remedy those violations as required by the Guidelines. Therefore, the Panel will order her to remedy those violations promptly.

Code § 10B-13(d) authorizes a hearing panel to require the losing party in a dispute to pay all or a part of the filing fee. The Panel concludes that requiring Respondent to pay the entire filing fee is appropriate in this case.

The Panel also concludes that the attorneys' fees and management agent's charges incurred by Complainant in connection with this proceeding are reasonable. (The Panel notes that at the time of the hearing, Complainant was required by law to be represented by a member of the Maryland bar.) However, the question whether to award attorneys' fees and management agent charges requires discussion.

Code § 10B-13(c) provides that if a party, after proper notice, does not appear at a scheduled hearing, the hearing panel may order "any relief to another party that the facts on record warrant." Code § 10B-13(e) authorizes a panel to "order the payment of damages and any other relief that the law and the facts warrant." While the charges of Complainant's management agent should, in the Panel's view, qualify as damages and warranted relief, attorneys' fees generally do not and they are not normally awarded in litigated matters.

One exception to the general rule against awarding attorneys' fees arises when a provision of law authorizes such an award. Code § 10B-13(d) authorizes the award of

attorneys' fees and costs if there is a provision to that effect in the governing documents, or if a party's conduct in connection the dispute resolution process is improper.¹

In this case, Complainant did not draw the Panel's attention to any provision of its governing documents regarding the award of fees and no such provision is readily apparent to the Panel.

With respect to Respondent's conduct, the Panel concludes that Respondent did not act frivolously, unreasonably or in bad faith, nor did she delay or hinder the dispute resolution process; she simply ignored it. Additionally, the Panel cannot conclude that Respondent *unreasonably* refused to accept or participate in mediation because the Panel has no evidence as to Respondent's circumstances and does not know whether Respondent's non-participation was reasonable or not.

In short, the Panel reads Code § 10B-13(d) as requiring some affirmative misconduct on a party's part in order to award fees; total inaction is not covered by the Code section.

The Panel recognizes the unfairness to Complainant and its homeowner-members of having to incur fees and charges to force a completely unresponsive homeowner to maintain her property in accordance with established community standards. In acquiring property within a common ownership community, Respondent obligated herself to play by the community's rules. By failing to maintain her property and by ignoring numerous notices, she violated those rules. The Panel therefore concludes that Complainant has been damaged to the extent of charges by its management agent in connection with this proceeding and that an award of those charges pursuant to Code § 10B-13(c) and (e) is warranted.

¹ Code § 10B-13(d) reads in its entirety as follows:

The hearing panel may award costs, including a reasonable attorney's fee, to any party if another party: (1) filed or maintained a frivolous dispute, or filed or maintained a dispute in other than good faith; (2) unreasonably refused to accept mediation or a dispute, or unreasonably withdrew from ongoing mediation; or (3) substantially delayed or hindered the dispute resolution process without good cause. The hearing panel may also award costs or attorneys' fees if an association document so requires and the award is reasonable under the circumstances. The hearing panel may also require a losing party in a dispute to pay all or a part of the filing fee.

Order

Based on the foregoing findings and conclusions, it is by the Panel, this 14th day of June, 2006, ORDERED as follows:

1. Respondent Adrienne Venson shall, within 30 days:
 - a. Scrape the front railing at 2201 Bear Valley Terrace, Silver Spring, Maryland to remove all rust and flaking paint and repaint the railing with black paint;
 - b. Replace missing or damaged screens in the front windows of 2201 Bear Valley Terrace, Silver Spring, Maryland;
 - c. Pay Complainant Longmead Crossing Community Services Association \$50.00, representing the filing fee paid by Complainant; and
 - d. Pay Complainant Longmead Crossing Community Services Association \$303.28, representing the charges of Complainant's management agent incurred in connection with this proceeding.
2. Complainant's request for attorneys' fees incurred in connection with this proceeding is denied.
3. In addition to service of this Order by the Office of Common Ownership Communities, a representative of Complainant shall make a reasonable attempt to serve a copy of this Order personally on Respondent, failing which the representative shall deposit a copy of this Order at Respondent's property in a manner reasonably calculated to come to Respondent's attention.

Panel members Kevin Gannon and Robert Gramzinski concur in this decision.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty days after this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

/s/ Charles H. Fleischer
Charles H. Fleischer, Panel Chair
Commission on Common Ownership Communities